

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ASTROPOWER LIQUIDATING TRUST, f/k/a
ASTROPOWER, INC.,

Plaintiff,

vs.

Civil Action No. 06-469 (JJF)

KPMG LLP,

Defendant.

DEFENDANT KPMG LLP'S MOTION TO DISMISS

Defendant KPMG LLP ("KPMG") moves to dismiss this action under Federal Rule of Civil Procedure 12(b)(6) due to failure to state a claim upon which relief can be granted.

The grounds for this motion are fully set forth in KPMG's opening brief filed herewith.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maribeth L. Minella

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Dated: December 12, 2006

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ORDER

The Court having considered Defendant KPMG LLP's Motion to Dismiss, and the parties' arguments in support and opposition thereof,

IT IS HEREBY ORDERED this ____ day of _____, 2007, that the Motion to Dismiss is GRANTED.

Joseph James Farnan Jr.
United States District Court Judge

CERTIFICATE OF SERVICE

I, Maribeth L. Minella, Esquire, hereby certify that on this 12th day of December 2006, I caused a true and correct copy of Defendant KPMG LLP's Motion to Dismiss to be filed with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that I have served the parties listed on the service list below in the manner indicated.

/s/ Maribeth L. Minella
Maribeth L. Minella

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